IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 281 of 2005

Dinesh Mehta S/o Sri Jagdish Singh Mehta,
R/o Mehta Niwas, Near Sainik School,
Mallital, Nainital. ……. Appellant

Versus

1/1. Ajay Sah S/o Narender Lal Sah.
1/2. Deepak Sah S/o Narender Lal Sah.
1/3. Neeraj Sah S/o Narender Lal Sah.
All R/o Hotel Armadale, P.O. Mallital,
Nainital.
2. National Insurance Company Ltd.,
through Divisional Manager,
Divisional Office Uniyal Niketan,
Nainital. ……. Respondents

Mr. Akhil Kumar Sah, Advocate for the appellant.
Mr. Prabhat Pandey, Advocate for respondents Nos. 1/1, 1/2 and 1/3.
Mr. D.S. Patni, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimant's appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / District Judge, Nainital vide Award dated 24.06.2004 passed in M.A.C.P. No. 66 of 2001.

2. Claimant Dinesh Mehta claimed compensation of Rs. 4,00,000/- for the injuries sustained by him in the motor accident on 30.11.2000 when the Jeep bearing registration No. UP02 D 4941, in which he was travelling from Haldwani to Nainital, met with an accident due to the rash and negligent driving of its driver and dashed against a tree resulting in multiple serious injuries to the claimant. The claimant pleaded that he spent substantial amount on his treatment and on account of the injuries sustained by him in the

accident he has been rendered unfit to pursue his profession as an Advocate.

3. The owner and insurer of the Jeep contested the claim and denied their liability to pay compensation to the claimant. The owner of the Jeep took the plea that the driver of the Jeep was driving carefully and, as the vehicle was insured, the liability to pay compensation, if any, would be that of the Insurance Company. The insurer, on the other hand, pleaded that the Jeep was being plied in breach of the policy conditions and the driver was not holding a valid driving license.

4. The claimant examined himself as PW1 in support of his claim, whereas the owner and the insurer of the Jeep did not examine any witness.

5. The Tribunal, on the evidence led by the parties, held that claimant Dinesh Mehta sustained injuries in the motor accident on 30.11.2000; the accident occurred due to the rash and negligent driving of the driver of the Jeep; and the insurer of the Jeep was liable to pay compensation to the claimant.

6. Considering the nature of the injuries sustained by the claimant in the accident and the evidence about the expenses on his treatment including the bills and vouchers, the Tribunal awarded Rs. 45,000/- towards Medical Expenses and Rs. 10,000/- for Pain & Suffering. Thus, a total sum of Rs. 55,000/- was awarded as compensation to the claimant for the injuries sustained by him in the motor accident. The Tribunal, further, directed the insurer of the Jeep to pay interest at the rate of 9% per annum in the event of its failure to pay the amount of compensation within a period of one month from the date of the Award.

7. Mr. Akhil Kumar Sah, the learned counsel for the appellant submitted that the Tribunal has erred in awarding low compensation of Rs. 55,000/- only though the claimant suffered multiple serious injuries including fractures of radius and ulna bones of his right hand and of left pelvic bone; and in not awarding any interest on the amount of compensation and in directing only a conditional payment of interest in the event of failure of the Insurance Company to pay the amount of compensation to the claimant within a period of one month from the date of the Award.

8. Mr. Prabhat Pandey, the learned counsel for the owner of the Jeep and Mr. D.S. Patni, the learned counsel for the insurer of the Jeep, on the other hand, supported the Award and submitted that the Tribunal has been quite liberal in awarding substantial amount of Rs. 55,000/- as compensation to the claimant though he did not suffer any permanent disability on account of the injuries sustained by him in the accident.

9. The findings recorded by the Tribunal that claimant Dinesh Mehta sustained injuries in the motor accident on 30.11.2000; the accident occurred due to the rash and negligent driving of the driver of the Jeep; and the insurer of the Jeep was liable to pay compensation to the claimant have, now attained finality as the respondents have not filed any appeal against the Award.

10. Claimant Dinesh Mehta was aged about 30 years on the date of the accident. He was a practising Advocate. It has come on record that he suffered multiple injuries in the accident including fractures of the bones of his right hand and of his left pelvic bone. It is a matter of common knowledge that substantial amount is required to be spent on the treatment of fractures. His right hand must have remained under plaster for a period of about two months and during this period, he could not have attended his profession as an Advocate and must have

suffered monetary loss. True, the claimant could not establish that the fractures sustained by him in the accident resulted in any permanent disability. Be that as it may, the fact remains that the claimant sustained fractures of the bones of his right hand and of pelvic bone and could not attend to his profession as an Advocate for a considerable period. The claimant produced bills and vouchers before the Tribunal in support of the amount spent on his treatment.

11. The amount of Rs. 55,000/- awarded by the Tribunal as compensation to the claimant, when examined in the context of the above-mentioned broad features of the case, in our opinion, is certainly on the lower side and deserves to be enhanced suitably. In our opinion, a lump sum of Rs. 80,000/- would be just and proper compensation to the claimant for the injuries sustained by him in the accident and towards the amount spent on treatment.

12. The Tribunal has fallen into error in not awarding any interest to the claimant. By directing only a conditional payment of interest in the event of insurer's failure to pay the amount of compensation within a period of one month from the date of the Award, the Tribunal has deprived the claimant of the amount of interest, which was otherwise payable to him. To avoid any possible delay in the computation of the amount of interest by the Tribunal, we deem it proper to quantify the same ourselves. The accident in the present case took place on 30.11.2000. The claim petition was filed on 20.04.2001. The impugned Award was passed by the Tribunal on 24.06.2004 and the amount of Rs. 55,000/- awarded by the Tribunal was deposited by the Insurance Company on or before 24.07.2004. Considering the above-mentioned relevant factors, we quantify the amount of interest at Rs. 20,000/- (Rupees Twenty Thousand only).

13. Thus, the claimant becomes entitled to receive a total sum of Rs. 1,00,000/- (Rupees One Lakh only) [Rs. 80,000/- towards Compensation + Rs. 20,000/- towards Interest).

14. For the foregoing reasons, the appeal filed by the appellant for enhancement of the compensation is allowed in part. The compensation of Rs. 55,000/- (Rupees Fifty Five Thousand only) awarded by the Tribunal is enhanced to Rs. 80,000/- (Rupees Eighty Thousand only) with further quantified interest of Rs. 20,000/- (Rupees Twenty Thousand only) Second respondent National Insurance Company Ltd. is directed to deposit the enhanced amount of compensation and Rs. 20,000/- quantified as Interest within a period of two months from today before the concerning Claims Tribunal.

15. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**
16.10.2006 16.10.2006

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